

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 32

(San Leandro, CA)

CUMMINS WEST, INC.

Employer/Petitioner

and

Case 32-RM-763

TEAMSTERS AUTOMOTIVE EMPLOYEES  
AND ALLIED WORKERS, LOCAL 665,  
INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, AFL-CIO<sup>1</sup>

Union

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,<sup>2</sup> the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer/Petitioner, herein referred to as the Employer, a California corporation with its main office and place of business in San Leandro, California, is engaged in the distribution, sales, and service of Cummins diesel engines. In addition to the facility in San Leandro, the only facility involved herein, the Employer operates branches located in Sacramento, Fresno, and Bakersfield, California. During the course and conduct of its business operations,

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<sup>1</sup> The name of the Union is corrected to show its affiliation with the International Union as well as the International Union's affiliation with the AFL-CIO.

<sup>2</sup> At the hearing, the parties waived the filing of briefs.

the Employer annually sells goods valued in excess of \$50,000 directly to customers located outside the State of California. Based upon the above, I find that the Employer is engaged in commerce within the meaning of the Act and that its operations meet the Board's standard for non-retail operations. Accordingly, the assertion of jurisdiction over the Employer is appropriate herein.

3. The Union is a labor organization within the meaning of Section 2(5) of the Act.

4. The Union claims to represent certain employees of the Employer.

5. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act for the reasons set forth below.

The Employer has maintained a collective-bargaining relationship with the Union, or with its predecessor Teamsters Local 241, for at least 30 years. Initially, the Employer maintained its main office as well as a facility for distributing, selling, and servicing Cummins diesel engines in San Francisco, California. At that location, the Union, or its predecessor, represented the counter employees and the warehouse employees. A different union represented the technicians in the service department. In addition to providing parts and equipment for the shop and customers at the San Francisco branch, the warehouse at that location also served as the distribution center for the outlying branches. In the late 1970's as business grew, a separate warehouse was established in Hayward, California, across the bay from San Francisco. Prior to the opening of the Hayward warehouse, there were about 15 unit employees in San Francisco, about half in the warehouse and half working the counters. A small warehouse was maintained at the San Francisco branch to service local needs. Transfers from the San Francisco warehouse initially staffed the Hayward location. It operated on a non-union basis.

In about 1986 the San Francisco branch and headquarters facility was closed and moved to a new facility in San Leandro, California, which is also across the bay from San Francisco and just north of Hayward. The parts and warehouse employees employed at the San Francisco branch transferred to the new location and they continued to be represented by the Union for purposes of collective bargaining. There were 10 employees in the bargaining unit at the time of the move to San Leandro. Over time, the number of parts or counter employees was reduced as the result of technological innovations. Rather than placing their orders over the telephone with parts employees, customers ordered parts and equipment electronically directly to the warehouse with the paperwork being prepared automatically by computers. During this time, the Hayward warehouse remained non-union.

In the early part of 1997, the Employer moved the San Leandro branch operations, the headquarters operations, and the Hayward warehouse operations, to a newer, much larger location in San Leandro. For a period of time the employees who had worked at the Hayward warehouse remained non-union and the San Leandro branch employees remained covered by the collective bargaining agreement. Pursuant to an agreement between the parties dated September 22, 1997, the former Hayward employees were brought under the terms of the collective bargaining agreement covering the former San Francisco employees starting on January 1, 1998. At that time there were three journeymen parts employees who had historically been covered by the contract, Charles Stine, Raul Islais, and Clifford Sciacqua, and twelve warehouse employees who transferred from the Hayward warehouse. Although classified as a journeyman parts employee, Sciacqua actually worked as a warehouse employee, doing the same type of work as the other warehouse employees, except that generally he picked orders for the service department rather than for outside customers or other branches. When he is off work the other warehouse employees pick orders for the service technicians. Sciacqua was formerly a journeyman parts employee and his classification and wage rate was "grandfathered" when he ceased working in the customer service center where the other parts employees worked. The collective bargaining agreement covering the new San Leandro facility expired by its terms on May 31, 1998.

On March 18, 1998 a decertification petition was filed in Case 32-RD-1303 by one of the former Hayward warehouse employees. The petition, on its face, sought an election among warehouse employees employed at the San Leandro facility. Processing of the petition was thereafter "blocked" by the unfair labor practice charge filed by the Union against the Employer in Case 32-CA-16693. The dismissal of that charge by the undersigned was appealed by the Union to the General Counsel in Washington, D.C. The Office of Appeals denied the appeal by letter dated December 16, 1998, thereby "unblocking" the petition in Case 32-RD-1303. On January 19, 1999, the Union disclaimed any interest in representing the warehouse employees at the San Leandro facility. On January 20, 1999, the petition in Case 32- RD-1303 was withdrawn and the case was closed. Notwithstanding the above, as of the time of the hearing the Employer was still applying all of the terms of the expired collective bargaining agreement to all of the warehouse and parts employees at the San Leandro facility.

The parts employees work in the customer service center, which is an enclosed area between the warehouse and the service area where engines are repaired. However, there is direct access from the customer service center to the parts warehouse. As of the time of the hearing, Raul Islais worked in the customer center during the day shift and Charles Stine worked the night shift, from 4:00 p.m. to midnight. Sciacqua worked in the warehouse during the day shift mainly picking parts ordered by the service technicians through Islais. At night, Stine goes into the warehouse to pick his own parts. According to the

record, warehouse employee Jason Schneider, who transferred from Hayward with the other warehouse employees, is in training to be a parts employee and is working with Islais in addition to doing regular warehouse work. Under the expired agreement being applied to the San Leandro facility, journeymen parts employees earn substantially more than warehouse employees. The warehouse employee rate is pegged at 75% of the journeyman parts employee wage rate. Over the years, parts employees have worked their way up from the warehouse. They have not been hired from the outside. Apart from wages all other benefits and conditions of employment are identical for parts employees and warehouse employees. With respect to supervision, Islais and Stine report to Robert Baumgardner, the Customer Service Center supervisor. Sciacqua and the other warehouse employees report to Matt Lobdell, the warehouse manager. In turn, Baumgardner and Lobdell report to Debbie Delucchi, Operations Manager.

Following its disclaimer of interest in representing the warehouse employees, the Union notified the Employer it wanted to negotiate a new agreement for the parts employees. At the hearing, the Union made it clear that seeks to represent only the three employees classified as journeymen parts employees, Islais, Stine, and Sciacqua. The issue, accordingly, is whether such a unit is appropriate and if not, should the petition be dismissed in view of the Union's disclaimer in representing the warehouse employees.

Notwithstanding all of the changes in the Employer's operations, it is clear that historically the Union, or its predecessor, for a period of at least 30 years represented both parts employees and warehouse employees in the same unit. This was true when the only Bay Area facility was in San Francisco and it was also true when the branch facility was moved to San Leandro. The various collective bargaining agreements have always had wage rates for both parts employees and warehouse employees. Furthermore, the Union accepted recognition on behalf of the Hayward warehouse employees when they were moved to the new San Leandro facility. In addition, while the wage rates are higher for parts employees than for the warehouse employees, this appears to be based upon the higher level of skill and knowledge required of such employees. It is not the result of any history of separate bargaining on behalf of such employees. Also, the work of the parts employees and the warehouse employees is integrated in that orders generated by the parts employees are filled by warehouse employees, if not by the parts employees themselves. And, as in the case of Schneider, parts employee positions are filled by warehouse employees through on the job training. Finally, Sciacqua, whom the Union seeks to represent, while classified as a Journeyman Parts Employee, actually works full time as a warehouse employee.

In view of the above and the record as a whole, I conclude first of all that there was never a bargaining unit limited solely to parts employees. Rather, the collective bargaining unit has always covered warehouse employees and parts employees. Secondly, and most importantly, I conclude that the smallest

appropriate unit is one which includes both parts employees and warehouse employees in view of the long history of bargaining on that basis as well as the lack of a separate community of interest on the part of the parts employees. In determining appropriate bargaining units, the Board gives great weight to collective bargaining history. *Fraser & Johnston Co.*, 189 NLRB 142, 151, fn. 5 (1971). Further, the party challenging a historical unit as no longer appropriate bears a heavy evidentiary burden. *Trident Seafoods, Inc.*, 318 NLRB 738 (1995). Moreover, the unit sought by the Union is artificial and lacking in cohesiveness in that the Union would include Sciacqua, who spends all or at least most of his time doing warehouse work, and would exclude Schneider, who spends much of his time working in the customer service center training to be a parts employee.

The petition herein seeks an election in a unit of all parts department and warehouse employees. The Union, however, has unequivocally disclaimed any interest in representing the warehouse employees and has engaged in no conduct inconsistent with that disclaimer. It is well established that a question concerning representation is established in the case of an employer petition only if it seeks an election in the unit for which there has been a demand for recognition. In the instant matter the Union seeks recognition only with respect to the three employees classified as Journeymen Parts Employees. It does not seek recognition for the warehouse employees who comprise the majority of the overall unit. Accordingly, dismissal of the petition is warranted. In *PSM Steel Construction, Inc.*, 309 NLRB 1302 (1992), the Board upheld the dismissal of the petition in a similar situation where the union disclaimed any interest in representing all construction employees but sought only to represent a single operating engineer. Inasmuch as there was no question concerning representation in the petitioned-for unit, dismissal of petition was warranted.

In summary, although I conclude that the petitioned-for unit is the smallest appropriate unit, I find that the Union has not demanded recognition in that unit and, therefore, there is no question concerning representation.

#### ORDER DISMISSING PETITION

IT IS ORDERED that the petition be, and it hereby is, dismissed.

#### RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street,

N.W., Washington, DC 20570. This request must be received by the Board in Washington by May 13, 1999.

Dated at Oakland, California this 29th day of April, 1999.

/s/James S. Scott

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